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FILED
YOLO SUPERIOR COURT

JUL 24 2009
By [Signature]
Deputy

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13 Attorneys for Defendant
14 MARCO ANTONIO TOPETE

11 IN THE SUPERIOR COURT OF CALIFORNIA
12
13 IN AND FOR THE COUNTY OF YOLO

14 THE PEOPLE OF THE STATE OF
15 CALIFORNIA,

Case No. CR08-3355

16 Plaintiff,

DECLARATION OF
DISQUALIFICATION
[C.C.P. SEC. 170.1]

17 vs.

18 MARCO ANTONIO TOPETE,

19 Defendant.
20 _____/

21 I, Thomas A. Purtell, declare:

22 1. I am an attorney representing the defendant in the above-entitled
23 action.

24 2. That the Honorable Timothy Fall, the Judge before whom the trial
25 of the aforesaid action is pending, is prejudiced against the defendant

1 and/or a reasonable person aware of the facts might reasonably entertain a
2 doubt that the Judge would be able to be impartial so that the defendant
3 cannot have a fair and impartial trial before such Judge. The facts which
4 constitute the basis for this challenge are as follows:

5
6 Judge Fall was assigned to preside over this case for all purposes on
7 August 11, 2008. The defendant was arraigned before Judge Fall on
8 August 12, 2008.

9 Subsequently, in the winter of 2008, the defendant advised a defense
10 investigator that the defendant had learned that his attorneys of record,
11 Hayes Gable, III and declarant had actively supported Judge Fall in a
12 contested election which took place prior to Judge Fall's assignment in this
13 case.
14

15 The defendant voiced concern that his attorneys might not be as
16 aggressive toward the Judge as he would want them to be on his behalf
17 and/or that Judge Fall might lean toward the prosecution's positions in the
18 case to avoid the appearance of favoring defense counsel in light of their
19 open support of the Judge's election efforts.
20

21 The defendant asked counsel to move to recuse Judge Fall. Defense
22 counsel declined to do this but, over time, suggested to the defendant that
23 he could make such a motion in open court. Defendant did so at a status
24 conference on June 12, 2009. He asked Judge Fall to recuse himself in this
25

1 case because of the political connection between the Judge and defense
2 counsel.

3 The Judge denied the defendant's request and, in so doing, made the
4 following statements:

5
6 Mr. Topete, it may have slipped your mind, but at the arraignment on
7 the information, I disclosed not only that Mr. Purtell had been one of
8 my supporters and had contributed and that Mr. Gable had supported
9 me as well, I also disclosed that I had received encouragement from
10 Mr. Hamilton, and so that the disclosure was as to not just the two
11 that you've raised, but to a person on the other side as well. At that
12 time, I disclosed that I had just finished a judicial campaign a few
13 months prior, and that those people had, in one way or another,
14 provided encouragement or support to me through the campaign,
15 and I then told the attorneys at that time that if anyone thought
16 there was a reason to take further action, they could do so. So this
17 disclosure was made. It is not that it has not been made, you've
18 discovered it, and you're asking me to explain why I did not raise it
19 earlier. I raised it earlier. I raised it at the very first hearing that
20 you and I had together in Department 9 across the street, sir. [RT
21 171]

22 In truth and in fact, the record reveals that Judge Fall made no such
23 statements or disclosures nor raised such issues either at the August 12,
24 2008 arraignment or at any subsequent hearing prior to the defendant's
25 request that the Judge recuse himself. In addition, Mr. Hamilton was not
even present on the record on August 12, 2008. These facts were made
known to the defendant following the Judge's statements of June 12, 2009.


If Judge Fall had, on August 12, 2008, made the statements he
claims to have made, and which claimed statements he relied upon in
declining to recuse himself, he would have been in compliance with Canon
of Judicial Ethics, Canon 3E(2) which provides that "In all trial proceedings,

1 a Judge shall disclose on the record information that is reasonably relevant
2 to the question of disqualification under Code of Civil Procedure Section
3 170.1, even if the Judge believes there is no actual basis for
4 disqualification.

5
6 Had Judge Fall made the claimed disclosures on August 12, 2008, the
7 defendant could have pursued his right to peremptory challenge pursuant
8 to Code of Civil Procedure Section 170.6 within the time required by law.

9 3. The facts that constitute the basis for this challenge first came to
10 the attention of the defendant in the winter of 2008 and following the court
11 hearing of June 12, 2009.

12 I declare under penalty of perjury that the foregoing is true and
13 correct. Executed at Woodland, California on July 21, 2009.
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16 
17 THOMAS A. PURTELL
18 Attorney for Defendant
19 Marco Antonio Topete
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25

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the County of Yolo. I am over the age of eighteen years and not a party to the above-entitled action; my business address is 430 Third Street, Woodland, California 95695.

On the date below, I served the following document:

DECLARATION OF DISQUALIFICATION

- () BY MAIL. I caused such envelope, with postage thereon fully prepaid, to be placed in the United States Mail at Sacramento, California addressed as follows:
- (X) BY PERSONAL SERVICE: I caused such document to be delivered by hand to the offices of the persons listed below:

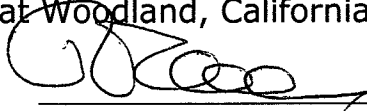
JEFF REISIG
Yolo County District Attorney
301 Second Street
Woodland, CA 95695

HON. TIMOTHY L. FALL
c/o Court Clerk
Yolo County Courthouse
725 Court Street
Woodland, CA 95695

- () BY FACSIMILE SERVICE: I caused the document to be served via facsimile to the person listed below:
- () BY E-MAIL ATTACHMENT: I caused the document to be served via e-mail as an attachment to the person listed below:

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 24, 2009 at Woodland, California.



Declarant